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IN THE

Supreme Court of the United States

October Term, 1980

No. ———

NORTHERN PIPELINE CONSTRUCTION CO.,
Appellant,

vs.

MARATHON PIPELINE COMPANY,
Appellee,

and

UNITED STATES OF AMERICA.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, FOURTH DIVISION

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Northern Pipeline Construction Company, appellant, appeals from the judgment and order of the United States District Court, District of Minnesota, Fourth Division, dated April 23, 1981, dismissing appellant's Complaint initiated by adversary proceeding in the Bankruptcy Court against appellee Marathon Pipeline Company and holding that the delegation of authority in 28 U.S.C. §1471 to the bankruptcy judges is an unconstitutional delegation of authority.

OPINIONS BELOW

The order of the United States District Court for the District of Minnesota, Fourth Division, is unreported and is appended at A-1. The memorandum and order of the Bankruptcy Court is unreported; it is appended at A-2 through A-11.

JURISDICTION

The District Court's order and judgment were entered on April 23, 1981.

A notice of appeal to this Court was duly filed by the United States of America (intervenor in the proceedings below) in the District Court for the District of Minnesota, Fourth Division, on May 19, 1981; a notice of appeal was duly filed by appellant in the District Court of Minnesota for the Fourth Division on May 20, 1981.

This appeal is being docketed in this Court within sixty days from the filing of the notice of appeal below. The jurisdiction of this Court is invoked under 28 U.S.C. §1252 and §2101(a).

THE STATUTE INVOLVED

Section 1471 of the Bankruptcy Reform Act, Pub.L.No. 95-598, 95th Cong. 2d sess. (Nov. 6, 1978), 92 Stat. 2549, 2668-2669 (1978), 28 U.S.C. §1471, provides as follows:

> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
>
> (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings aris-

ing under title 11 or arising in or related to cases under title 11.

(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

(d) Subsection (b) or (c) of this section does not prevent a district court or a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case.

QUESTION PRESENTED

Whether the delegation of authority conferred in 28 U.S.C. §1471 to the bankruptcy judges is a constitutional delegation of jurisdiction.

CONSTITUTIONAL PROVISIONS AND RULES

Article I, Section 8, United States Constitution:

Congress shall have the power:

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To constitute Tribunals inferior to the supreme Court;

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and

all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article III, Section 1, United States Constitution:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behavior. . . .

STATEMENT OF THE CASE

Appellant, Northern Pipeline Construction Company ("Northern"), is a debtor in a proceeding for reorganization under Chapter 11 of the Bankruptcy Code.

On March 8, 1979 (prior to initiation of reorganization proceedings) Northern instituted a lawsuit against the appellee, Marathon Pipeline Company ("Marathon"), in the United States District Court for the Western District of Kentucky. Jurisdiction was based upon diversity of citizenship, 28 U.S.C. §1332 and upon the enforcement of a mechanics lien under Kentucky Revised Statutes, §376.090 pursuant to 28 U.S.C. §1655.

The Complaint therein asserts claims for relief arising out of the construction by Northern for Marathon of certain oil product pipelines in Jefferson County, Kentucky. An Answer and Counterclaim were interposed by Marathon and limited discovery was undertaken by both parties.

On January 14, 1980, Northern filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, District of Minnesota, Third Division.

On March 25, 1980, Northern, as debtor-in-possession, filed and served a Complaint against Marathon, initiating an adversary proceeding under the Bankruptcy Code. That Complaint asserts the same claims asserted in the lawsuit then pending in the Western District of Kentucky with the exception of the claim for mechanics lien relief.

Appellee Marathon moved the Bankruptcy Court for dismissal for lack of jurisdiction and alternatively for dismissal, abstention or transfer of the adversary proceeding, which motion was denied by the Bankruptcy Court on November 17, 1980.*

Appellee's application to the United States District Court for the District of Minnesota, Fourth Division, for leave to appeal the order of the Bankruptcy Court was denied on March 5, 1981. Upon appellee's motion for reconsideration, the District Court granted appellee's Motion for Leave to Appeal on March 26, 1981.

On April 23, 1981, the District Court entered an order dismissing the adversary proceeding instituted by Northern against Marathon, holding that the delegation of authority in 28 U.S.C. §1471 to the bankruptcy judges is an unconstitutional delegation of jurisdiction.

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* Prior to its order, the Bankruptcy Court granted leave to intervene to the United States of America pursuant to 28 U.S.C. §2403(a) and Rule 24(a)(1), Federal Rules of Civil Procedure.

THE QUESTION IS SUBSTANTIAL

This appeal presents the issue whether under Article I of the Constitution Congress may establish a Bankruptcy Court of expanded jurisdiction and powers without attending the requirements of Article III.

As enacted by Congress, the Bankruptcy Reform Act of 1978 provides for appointment of judges by the President, by and with the advice and consent of the Senate, for fourteen-year terms. 28 U.S.C. §152, 153. Section 1 of Article III requires that judges vested with judicial power shall be tenured.

The District Court's decision was apparently premised on the view that the creation of the new Bankruptcy Court was an exercise of a "judicial power" of the United States under Article III without the requisites of Article III lifetime tenure and prohibitions against salary reduction.**

This Court has not decided the issue of expanded bankruptcy jurisdiction, although it recently has decided similar issues in favor of constitutionality in *United States v. Raddatz*, 447 U.S. 667 (1980), reh. denied 448 U.S. 916 (1981) and *Palmore v. United States*, 411 U.S. 389 (1973).

Palmore, supra, upheld the constitutionality of legislation for the District of Columbia providing for trying local criminal cases before judges not accorded life tenure and protection against reduction in salary, and this Court stated:

> It is apparent that neither this Court nor Congress has read the Constitution as requiring every federal question arising under the federal law, or even every criminal prosecution for violating an Act of Congress, to be tried in an Art. III court before a judge enjoying lifetime

** The District Court issued no memorandum of law, it simply concluded in a one-page order that 28 U.S.C. §1471 was unconstitutional.

> tenure and protection against salary reduction. Rather, both Congress and this Court have recognized that state courts are appropriate forums in which federal questions and federal crimes may at times be tried; and that the requirements of Art. III, which are applicable where laws of national applicability and affairs of national concern are at stake, must in proper circumstances give way to accommodate plenary grants of power to Congress to legislate with respect to specialized areas having particularized needs and warranting distinctive treatment. 411 U.S. at 407-408.

Last term in *United States v. Raddatz, supra*, this Court upheld the constitutionality of the Federal Magistrates Act, 28 U.S.C. §636(b)(1)(B), against a challenge on Article III and due process grounds. There the Court stated that Congress made clear that the District Court had plenary discretion whether to authorize a magistrate to hold an evidentiary hearing in a magistrate's capacity in aid of the District Court and under its jurisdiction.

Here, as in *Palmore* and *Raddatz*, the basic powers and functions of an Article I court have been questioned and the administration of the bankruptcy laws of the United States has been jeopardized.

Whether Congress is permitted to constitute tribunals inferior to the Supreme Court so as to administer uniform laws on the subject of bankruptcy without providing an Article III judiciary is a fundamental issue requiring determination by this Court. The decision appealed from the District Court clearly is potentially far-reaching. The impact of this Court's decision with respect to Congress' enactment of a comprehensive Bankruptcy Reform Act, its jurisdiction and powers will be substantial.

CONCLUSION

Appellant asks this Court to note probable jurisdiction of this appeal and to set this case for full briefing and argument.

Respectfully submitted,

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